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### **3.0 ANALYSIS OF PURCHASING POLICIES, PROCEDURES, AND PROGRAMS**

This chapter provides a comprehensive description and analysis of the City's purchasing and contracting policies, procedures, and programs as they relate to the participation of minority- and women-owned businesses. This chapter also provides an evaluation of the effectiveness of the City's race- and gender-based programs, as well as its race- and gender-neutral programs. The race- and gender-based programs implemented by the City are restricted to construction and purchasing of goods and services. Therefore, this analysis is limited to those areas. Additionally, this chapter contains a review of the City's minority- and women-owned business certification procedures. The chapter is organized into five sections:

1. Methodology;
2. Construction Policies, Procedures, and Programs;
3. Procurement Policies, Procedures, and Programs;
4. Certification Policies, Procedures, and Programs; and
5. Small Business Assistance Program.

#### **3.1 Methodology**

This section will discuss the steps taken to analyze the City's contracting and purchasing policies, procedures, and programs, and evaluate the extent to which the City's race- and gender-based programs, the City's race- and gender-neutral programs, and the City's M/WBE certification process facilitate or operate as a barrier to M/WBE participation.

The analysis included the following steps:

1. Collect, review and summarize City contracting and purchasing manuals currently in use. Discuss with managers the changes that contracting and purchasing policies have undergone during the 1993-97 time frame and their effects on the MBE and WBE programs. The manuals reviewed are limited to those provided by the City.

2. Develop questionnaires and conduct interviews of key City contracting and purchasing officials and staff to determine how existing contracting and purchasing policies have been implemented.
3. Interview M/WBE and non-M/WBE owners to determine whether barriers exist within the City's contracting and purchasing procedures and programs.
4. Analyze the effect of City contracting and purchasing procedures on the utilization of M/WBEs by the City.
5. Review applicable City ordinances, regulations, resolutions, and policies that guide M/WBE programs and race- and gender-neutral programs. Discuss with appropriate personnel in the City and M/WBE owners the operations, policies, and procedures of the M/WBE programs. Discuss the changes over time of the M/WBE program in the City. The policies and procedures reviewed are limited to those provided by the City.

First, we were provided with and reviewed the ordinances implemented as a result of the minority- and women-owned business enterprise program, and amendments to those ordinances, up to and including the current ordinances. Specifically, we evaluated the following ordinances:

1. Phoenix City Code, Chapter 18, Article VI, effective October 15, 1993  
- An ordinance amending Chapter 18, of the Phoenix City Code by adding Article VI creating a new Minority-Owned Business Enterprise and Woman-Owned Business Enterprise Participation Program for the construction industry.
2. Phoenix City Code Chapter 18, Article VII, effective December 8, 1993  
- An ordinance amending Chapter 18 of the Phoenix City Code by adding Article VII creating a new Minority-Owned Business Enterprise and Woman-Owned Business Enterprise Procurement Program.
3. Amendments to Chapter 18, Article VI, effective December 8, 1993  
- An ordinance amending Chapter 18 of the Phoenix City Code by making technical amendments to Article VI, the Minority-Owned Business Enterprise and Woman-Owned Business Enterprise Participation Program for the construction industry.
4. Phoenix City Code Chapter 18, Article VIII, effective October 13, 1993  
- An ordinance amending Chapter 18 of the Phoenix City Code by adding Article VIII relating to the certification of Minority-Owned Business Enterprises and Women-Owned Business Enterprises; by establishing criteria for certification; by establishing appeal procedures.
5. Amendments to Chapter 18, Articles VI and VII, effective November 13, 1995 - An ordinance amending Chapter 18, Articles VI and VII, of the Phoenix City Code by amending Section 18-101(K), pertaining to the

definition of “Eligible Project;” by amending Section 18-106, pertaining to requirements for compliance by bidders on City construction contracts with MBE/WBE project participation goals, to procedures to obtain waivers of such goals, and to creation of a Program Oversight Committee; by amending Section 18-204, pertaining to bid preferences for Minority-Owned Business Enterprises and Woman-Owned Business Enterprises for certain City contracts.

In reviewing each ordinance, we noted areas that would require additional information from City officials regarding how the ordinances are being applied. City officials in all relevant City departments also provided additional documentation that their department utilizes to implement the ordinances. Each department involved with and affected by the M/WBE program was asked to provide us with relevant documentation. We reviewed the following documents:

1. The certification application and any additional information provided by firms attempting to become certified with the City of Phoenix;
2. The City’s Minority- and Woman-Owned Business Participation Program Certification training manual;
3. A *draft* procedure manual for setting minority and woman business enterprise subcontracting goals;
4. A *draft* procedure manual for construction bid opening;
5. Materials containing information on the Goals Compliance Unit;
6. A *draft* regulation used by the Goals Compliance Unit to implement Article VI as it relates to monitoring goals on construction projects; and
7. Information from the Finance Department regarding the success of the price preference program.

As part of our review of the above documents, we noted areas that needed additional information regarding application. While some of the documents provided were stamped “DRAFT,” we were informed that the draft policies were operational.

After reviewing all documents collected, interview instruments were prepared for each department involved in City contracting and purchasing. Interviews were scheduled with a number of City officials including department heads and key staff members. M/WBE construction companies and businesses that provide goods and services to the City were

interviewed. The group of business owners interviewed was a cross section of minority, non-minority, and women business owners. Once the interview schedule was finalized, the interviewers developed additional questions and tailored each interview instrument to each department.

Interviews were held in Phoenix the week of September 14, 1998. Each interview was designed to last approximately one hour and was held at the City of Phoenix offices. One City official was interviewed by telephone because she was unavailable at the time the interviewers were in Phoenix. A total of 16 City officials were interviewed from the following areas: the City Manager's Office, the Equal Opportunity Department (EOD), the Engineering and Architectural Services Department (EAS), the Goals Compliance Unit, the Finance Department, and the Community and Economic Development Department (CED). In addition to the interviews of City officials, four female, four non-minority, one African American, and four Hispanic business owners were interviewed.

Each interview was tape recorded and transcribed. The questions asked of City officials were designed to elicit a better understanding of how the City's ordinances, policies, programs, and procedures have been applied in each relevant department. The following sections summarize our review of the City's policies, procedures, and practices listed above and information gathered from the interviews conducted.

### **3.2 Construction Policies, Procedures, and Programs**

Chapter 18, Article VI, of the Phoenix City Code, outlines the City's policies on minority- and women-owned business participation in the construction industry. According to the ordinance's statement of policy, this Article was enacted to reverse past practices of awarding a disproportionate number of City contracts to non-minority owned business enterprises and non-woman owned business enterprises as determined in the City's first disparity study in 1993. In practice, the City's ordinance is designed to increase the

participation of minority-owned business enterprises and women-owned business enterprises in the City's construction contracting program by increasing subcontracting opportunities.

### ***3.2.1 Establishing Project Goals***

Section 18-103 of the ordinance, states that the City Manager is responsible for establishing project subcontractor goals. The City Manager has delegated this responsibility to the City Engineer. Construction subcontractor goals are initiated in EAS and are finalized by the Goals Setting Committee. Sections 18-104 and 18-105 of this ordinance require the establishment of annual participation goals, as well as individual project participation goals and outline criteria to be considered when establishing these goals.

First, in order to set a project goal, there must be at least one certified MBE or WBE for a trade. Second, in determining the project goal, the ordinance states that City officials shall consider: 1) the availability<sup>1</sup> of certified MBEs and WBEs in various industry classifications and professions which are ready, willing and able to provide labor and materials on the particular contract; 2) the level of participation by such firms in past contracts awarded by the City; 3) the design plans and contract specifications; and 4) any other relevant factors.

Based on interviews with City officials, the actual process of establishing project goals is as follows. Initially, the administrative assistant in EAS receives cost estimates and project plans from the project manager. The assistant then records the cost estimates on the M/WBE subcontracting goals recommendation form. See Appendix A-1 M/WBE Subcontracting Goals Recommendation Form. MBEs and WBEs in the current City of Phoenix Construction Directory for Maricopa County,<sup>2</sup> that are certified to work in each trade, are then listed in the appropriate area on the recommendation form.<sup>3</sup> The total number of

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<sup>1</sup> Chapter 4.0 of this Report provides a detailed discussion on the issue of availability.

<sup>2</sup> This Directory will be discussed in Section 3.4 of this chapter concerning the certification process.

<sup>3</sup> General contractors are informed that the list provided may not be a complete and current, and they are encouraged to consult the directory to verify eligibility. See also, Section 3.2.2 of this chapter concerning the bidding process.

MBEs and WBEs in each subcontracting trade area determines whether that subcontracting area will count toward calculating a project goal, and ultimately whether a project goal will be set.

In order to include a subcontracting trade area in setting a project goal, there should be at least three certified MBEs or WBEs in the trade. Program administrators provided the rationale for this threshold -- if there are less than three certified subcontractors in a trade area, then including that area in calculating the project goal is likely to adversely affect competition and less likely to result in reasonable and attainable project goals. Finally, to recommend the project goal, the administrative assistant adds the percentages of the total contract dollar amount in each subcontracting trade area with three or more MBEs and WBEs listed, and divides that total percentage amount by four. The resulting percentage is the recommended goal for the project. According to program administrators, the purpose of dividing by four is based on their observations and experience that historically, only one of four certified businesses will bid on a subcontracting trade area of a project.

While the above process is largely objective, in actuality, our research revealed that there is a subjective component in determining the recommended goal. The administrative assistant considers the level of participation of certain businesses in past City contracts to determine whether the business should be considered in the subcontracting trade area for the project. In essence, a preliminary determination is made about the level of bidding activity of businesses in the trade area under consideration. For example, the administrative assistant may conclude that a subcontracting trade area should be included in determining the recommended goal even though only two certified subcontractors exist in that trade area.

Conversely, the administrative assistant may not include a subcontracting trade area in determining the recommended goal even if three or more subcontractors exist in that trade area if she knows that those six subcontractors generally do not bid. The M/WBE

subcontracting goals recommendation form is then submitted to the Goals Setting Committee.

The Goals Setting Committee is comprised of representatives from the Goals Compliance Unit of the City Manager's Office, EAS, and EOD. The Goals Setting Committee meets weekly to establish participation goals on City construction projects. The Committee reviews project plans with the project manager, the Goals Recommendation Form, and reviews recommended project goals.

At the discretion of the Committee, the recommended goals may be increased or decreased based on the Committee members' experience and knowledge of the construction community. Considerations include: 1) a subcontractor's current work load; 2) a subcontractor's bonding capacity; 3) whether the business has the required licenses to perform the work needed; 4) whether the businesses listed have historically bid on the type of work listed; and 5) the volume of work in a subcontracting area to determine whether the listed MBE or WBE has the capacity to complete the job. Committee members also make telephone calls to the MBEs and WBEs in various subcontracting areas for the limited purpose of determining whether the business intends to bid on the project. The Committee ultimately makes decisions similar to those made by the administrative assistant. Once this information is gathered and evaluated, the Committee then sets the final project goals.

City officials have a draft policy, "Setting Minority and Woman Business Enterprise Subcontracting Goals," dated September 30, 1996, which describes a process similar to the current process of setting goals with a few notable differences. The first major difference is that the draft policy sets a maximum goal of 10 percent for the final MBE goal and the final WBE goal combined. This limit was placed on goals because 10 percent was the upper limit of disparity documented in the enabling study. The second difference is that the draft policy specifically indicates that the ratio of MBE goals to WBE goals should be approximately four

to one because there are four times as many MBE firms as WBE firms in the Phoenix Metropolitan Statistical Area.

Third, the draft policy states that the City Code exempts projects estimated at \$50,000 or less from the goal setting process. This reflects a reduction in the contract amount from \$75,000 or less, originally set in the 1993 ordinance. This change was a result of the 1995 settlement agreement in AGC v. City of Phoenix. In many instances subcontractors may not express an interest in subcontracts on jobs less than \$50,000 because the subcontracting opportunities are too small. Also, a project requiring only one trade or a specialty trade may have a zero-zero subcontracting goal. The draft policy also recommends seasonal variations or adjustments in the level of subcontracting goals according to the level of need. The rationale for this recommendation was based on the observation that the number of construction projects advertised in the Valley can vary dramatically depending on the time of year. Finally, the draft policy states that subcontracting goals are only set for the base bid because many projects contain bid alternates which may or may not be awarded and allowances which may or may not be used, depending on the amount of the low bid and the project budget.

### **3.2.2 The Bidding Process**

The bidding process has changed significantly since the original ordinance was enacted in 1993. On projects with established participation goals, the original ordinance required all contractors bidding on the project to submit an M/WBE utilization plan<sup>4</sup> or a waiver request in an envelope separate from their bid in order to be considered for the contract award. The utilization plan was to be opened at a specified time, before bid opening. The waiver request would include evidence of the bidder's efforts to meet the

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<sup>4</sup> The M/WBE utilization plan was to include a listing of the names, addresses, and contact persons for the MBEs and WBEs to be used in the contract, the type of work or services each business would perform, and the percentage of the total contract dollar amount to be distributed to each MBE and WBE.



project goals. If the subcontracting goal was met, the bid would be opened later and considered along with all other eligible bids. If the subcontracting goal was not met, and the bidder requested a waiver, the waiver would be resolved in the manner described in Section 3.2.3, Waivers. If the goal was not met and no waiver request was submitted, then the bid would not be opened.

The process has since changed in several ways, primarily as a result of the 1995 settlement agreement in the AGC v. City of Phoenix litigation. Currently, when bids are opened, all bidders are required to submit an M/WBE Assurances Affidavit with their bid in which the bidder certifies that the established project goals will be met or that the bidder intends to request a waiver. See Appendix A-2 M/WBE Assurances Affidavit. Bidders intending to meet the project goals must submit a completed subcontractor goals packet by the close of business on the day following bid opening. Bidders requesting a waiver of the project goals must also submit formal documentations of their efforts to meet the project goals by close of the day on the day following bid opening. Only the apparent low bidder and other bidders who desire to remain in contention for the award are required to actually submit the subcontractor goals packet or waiver request.

According to Section 18-106(B), the subcontractor goals packet includes the M/WBE utilization plan for the project, a complete list of MBE and WBE subcontractors the bidder intends to utilize for the project, and the proposed M/WBE percentage of the total contract dollar amount. See Appendix A-3 M/WBE Utilization Form. As stated on the M/WBE Utilization Form, a bid will not be read in two instances: 1) if the Assurances Affidavit is not included; and 2) if the Affidavit is included, but the bidder fails to properly certify that it intends to submit the required subcontractor goals packet or a fully documented waiver.

Pre-bid meetings are held one to two weeks prior to the bid date on most projects. The purpose of the meeting is to answer questions about the project and to provide information about the administration of the goals program. The project manager, the project

engineer or architect, a representative from EOD, and a representative from the Goals Compliance Unit attend pre-bid meetings. Potential bidders receive a copy of the Subcontracting Goals Recommendation Form. This form is identical to the Subcontracting Goals Recommendation Form used by EAS to establish the recommended goals, except that the form provided during the pre-bid meeting does not include cost estimates or contract dollar percentage amounts. The rationale for removing the cost estimates and percentage amounts is to avoid assisting prime contractors in preparing their bids.

On the form distributed at pre-bid meetings, prime contractors are only provided with the subcontracting trade areas for the project and a list of all certified M/WBEs for each trade, regardless of whether the trade was included in determining the recommended goals. The list of all certified subcontractors in each trade area remains on the form distributed at pre-bid meetings to assist prime contractors in meeting the project goals. Prime contractors are also instructed at pre-bid meetings and in bid specifications to consult the most recent monthly Directory of Certified Firms for a complete and accurate list of all certified firms in all subcontracting trade areas.

Once prime contractors submit their M/WBE utilization form, the form is forwarded to EOD for approval. EOD confirms that the M/WBEs listed on the form are in the current certification directory. If the M/WBEs listed are not in the current directory, the prime contractor's bid will be rejected as non-compliant.

The other significant change in the bidding process occurred in the first amendment to Article VI in December 1993. The first amendment added Section 18-106(A)(1) regarding prime contractor participation. This section provided that on contracts of \$250,000 or less, a certified MBE or WBE prime contractor could meet the MBE or WBE project goal by utilizing the work actually performed by its own employees. The purpose of this Section was to allow MBE and WBE contractors that are capable of functioning as prime contractors to utilize their own employees to meet project participation goals. The 1995 amendment to

Article VI, however, repealed this provision, and it is not applicable to the current bidding process.

City officials also have a second policy in draft form, "Construction Bid Opening Procedure," dated October 14, 1996, that outlines the bid opening process along with the entire bidding process. The draft also includes the procedure for submitting an Assurances Affidavit and the information required to substantiate a waiver request. See Section 3.2.3, Waivers. These processes appear to be identical to the bidding process described above by City officials during interviews, although the draft has not yet been adopted in final form.

### **3.2.3 Waivers**

Bidders unable to meet project goals may request a complete or partial waiver and must indicate the scope of any partial waiver sought. All waiver requests must provide evidence of the bidder's good faith efforts to attempt to meet the project goals. Section 18-106(C) of the ordinance outlines a series of ways in which the bidder can demonstrate efforts made to meet project goals. The ordinance requires: 1) copies of written notification to MBEs and WBEs indicating the general contractor's desire to obtain quotes for subcontracting work; 2) evidence of efforts made to divide the work into economically feasible units to increase the likelihood of achieving the stated goals; 3) evidence of efforts made to negotiate with M/WBEs; 4) evidence of efforts made to assist M/WBEs contacted that need assistance in obtaining required bonds and insurance; 5) a written statement regarding reasons for any decision that an M/WBE subcontractor is not qualified; and 6) written quotes or records of verbal quotes solicited from all MBEs or WBEs seeking subcontract work.

While the criteria for obtaining a waiver has not significantly changed from 1993 to the present, the practical application of the waiver process has significantly changed. Research reflects that from 1993 until the 1995 amendments, the City's policy regarding meeting project goals was seemingly rigid. City officials indicated that between 1993 and 1995, they

did not grant waivers on projects with at least one general contractor who was able to meet the project goals. The attitude was that if one contractor was able to meet the goals, then all contractors should be able to meet the goals. Now the City takes a more flexible approach in reviewing waiver requests.

In 1994, the City established a Waiver Review Committee that is responsible for deciding whether to recommend waiver requests to the City Engineer. The Committee has established a Subcontracting Goals Waiver Review Form. See Appendix A-4 Subcontracting Goals Waiver Review Form. The form lists the criteria used by the Committee to determine whether to grant a waiver request. The Committee reviews each category on the form and evaluates the contractor's good faith efforts in attempting to meet project goals. Bidders requesting waivers must submit a letter explaining their reason(s) for the waiver along with supporting documentation demonstrating efforts made to solicit MBEs and WBEs as subcontractors on a project. The Committee then decides whether to grant the waiver based on the total number of categories in which the contractor has sufficiently complied with the requirements. Based on interviews with City officials, the criteria listed for granting or denying a waiver are not ranked in order of importance, the criteria are not weighted, and City officials have not established a definite number of categories that need to be satisfied to obtain a waiver.

The City awarded 504 projects with M/WBE goals between October 1993, when the participation program began, and September 1998. The waiver summary report for that time period is as follows:

- Waivers requested: 25
- Waivers rejected: 10
- Partial Waivers granted: 11
- Full Waivers granted: 4

The above numbers reflect only whether the low bidder on a project submitted a request for a waiver. At times, the second or third lowest bidder requests a waiver if he is still in contention for the bid award as a protester.

Article VI, Section 18-106(C) as amended in 1995, created a provision allowing a partial waiver of the MBE or WBE participation goal for situations in which all quotes submitted by MBEs and/or WBEs in a subcontracting trade area exceed the lowest bid from a non-M/WBE in the same trade by 20 percent or \$100,000. According to City officials, this provision was designed to minimize the effect of price gouging in the competitive bidding process. City officials indicated that prime contractors complained price gouging was a problem before the 1995 amendment. Since the amendment, however, price gouging has significantly decreased.

#### **3.2.4 Monitoring Compliance**

City officials have instituted several methods of monitoring compliance with the M/WBE participation program and project subcontracting goals. The Goals Compliance Unit was established as a means of monitoring compliance. The Unit consists of a compliance supervisor, a contract compliance specialist, and a part-time secretary. Unit members assist in the process of establishing project goals as representatives on the Goals Setting Committee and participate on the Waiver Review Committee. Unit members also assist general contractors in obtaining subcontractors to meet participation goals. The Unit's primary functions, however, are to monitor general contractors' compliance with participation goals once a contract has been awarded and to track utilization of M/WBEs.

For example, once an M/WBE utilization plan has been approved by EOD and a contract has been awarded, the Unit sends letters to all subcontractors listed on the general contractor's utilization plan to confirm that they are aware of the project and ascertain whether they intend to participate on the project. The Unit also confirms the subcontract dollar amount quoted to the general contractor. The Goals Compliance Unit sends a

representative to pre-construction meetings to review M/WBE program compliance requirements with the general contractors.

Throughout the duration of the project until completion, the Unit reviews the general contractor's monthly utilization reports, monitors payments, mediates any payments disputes, reviews any changes to the work performed by the MBE or WBE subcontractor, approves the substitution and/or release of M/WBE subcontractors, makes on-site visits to ensure compliance, and revises goals when necessary.

Contractors awarded contracts incorporating M/WBE participation goals are required to submit monthly participation reports to the Goals Compliance Unit summarizing the number and dollar amounts of subcontracting awards. Section 18-110 outlines possible sanctions for failure to meet project participation goals. For example, City officials may withhold up to 10 percent of all future payments until the contractor is in compliance with program requirements. In addition, City officials may refuse all future bids or offers from the contractor or cancel the project for noncompliance with the program. According to the Goals Compliance Unit supervisor, during the study period sanctions have not been needed to ensure compliance. The availability of sanctions has been sufficient to ensure compliance with participation program requirements.

### **3.2.5 M/WBE Program Oversight Committee**

Article VI, Section 18-106, as amended in 1995, established the Program Oversight Committee in order to monitor certain aspects of implementing the M/WBE participation program. The ordinance provides that the Committee is comprised of six persons: two members nominated by the City; two members from the Associated General Contractors of America, and two members from the minority construction community. In addition to the above six members, the Committee has a seventh non-voting member. The Committee's primary effort has been to design a Mentor-Protégé Program involving established

contractors and certified MBEs and WBEs. In addition, the Committee was to develop administrative rules to implement Article VI and specifically the waiver provisions.

In May 1998, the Committee completed a preliminary draft of the Mentor-Protégé Program.

The Program has not been approved by the City Council.

### **3.3 Procurement Policies, Procedures, and Programs**

Chapter 18, Article VII, of the Phoenix City Code, outlines the City's policies involving procurement of goods and non-professional services as they relate to minority- and women-owned businesses. According to the ordinance's statement of policy, this Article was enacted in December 1993, to reverse the past practices of awarding a disproportionate number of City contracts to non-minority and non-women-owned business enterprises as determined in the City's first disparity study in 1993, and to promote full and equal business opportunity for all persons doing business with the City.

#### **3.3.1 The Structure of City Procurement**

Procurement is defined in Section 18-201 as "buying, purchasing, renting, leasing or otherwise acquiring goods or services." Procurement also includes all functions that pertain to obtaining any good or service, including a description of requirements, selection and solicitation of sources, preparation and award of a contract, and all phases of contract administration.

The Purchasing Division of the City's Finance Department enters into contracts through the competitive procurement process to purchase goods and services on behalf of City departments.<sup>5</sup> These contracts are administered through the Central Purchasing Office of the Purchasing Division. To increase the competitiveness of M/WBEs in the procurement

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<sup>5</sup> Many goods and services used on a repetitive basis are purchased through requirements contracts through the competitive public bidding process in central purchasing. Other items are competitively purchased on a one-time contract basis. Departmental purchases, however, are not required to be competitively procured, nor are these purchases subject to the bid preference program.

process, the City has established a bid preference program for MBEs and WBEs in the procurement of goods and non-professional services<sup>6</sup> for centralized purchases.

The procurement process is administered and monitored by the Purchasing Division of the Finance Department, the Accounts Division of the Finance Department, City buyers, business liaisons, and other department staff in each City department seeking to obtain goods or services. Section 18-203 of Article VII delegates to the City Manager the responsibility of monitoring the bid preference program in the City's procurement efforts, as well as the responsibility of ensuring compliance with the program. The City Manager's Office has promulgated administrative regulations (A.R.) applicable to central purchasing and departmental purchasing, which will be discussed in the following section.

### **3.3.2 The Procurement Process**

The City Manager through Administrative Regulations requires all City departments to follow designated procedures for purchasing based on the dollar amount of the purchase.

All procurement actions by the Central Purchasing Office are conducted in accordance with AR 3.24, "Purchasing of Commodities, Capital Equipment and Non-Professional Services."

AR 3.29 applies to departmental purchases and the use of the departmental purchase order (DPO) for purchases under \$1,000.

### **Departmental Purchasing**

Departments use petty cash for purchases under \$100. According to A.R. 3.29, for purchases of incidental and non-recurring goods and services between \$100 and \$1,000, a department can use a DPO. These purchases under \$1,000 are generally not processed through the Central Purchasing Office because departments have the option to make

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<sup>6</sup> For purposes of this Study, this analysis of the City's procurement program will not include professional, architectural, or engineering services. All professional service contract procurement is decentralized and handled by the City department requesting the service. City department directors have the authority to contract professional services for their department that do not involve architecture or engineering services.



purchases under \$1,000 on their own with a DPO, or to request that the Central Purchasing Office make the purchase.<sup>7</sup> When using a DPO, departments are responsible for determining that the price of the item or service is fair and reasonable.

A.R. 3.29 governs the use of DPOs and establishes the following guidelines concerning the City's M/WBE Program. Departments are responsible for supporting the City's M/WBE participation program by using MBEs or WBEs whenever practical, considering fair pricing and competitive quality. Departments should reference the MBE/WBE Directory produced by EOD for consideration of any M/WBE. M/WBE firms should be given ample opportunity to compete for DPO purchases. DPO forms contain a section in which the department making the purchase can indicate the vendor(s) contacted and the price quoted. The DPO form states that department staff are encouraged to use MBEs and WBEs whenever possible and that they will report any utilization of certified MBEs and WBEs on the DPO form.

A.R. 3.24 also discusses purchases under \$1000 and states that for such purchases, the number of vendors to be contacted is discretionary. If only one supplier has been contacted, the buyer is required to document that the price is fair and reasonable. Prices may be obtained verbally or in writing. A.R. 3.24 states that DPOs should be used for purchases of goods and services costing less than \$500.00 and references A.R. 3.29 for an outline of policies and responsibilities for DPO purchases.

### **Centralized Purchasing**

Purchases over \$1,000 must be made through the Central Purchasing Office in accordance with A.R. 3.24. For purchases between \$1000 and \$5000, a minimum of three vendors must be contacted. However, if three potential sources are not known, the lack of

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<sup>7</sup> A department may elect not to purchase their own commodities with the DPO for any reason and request that the Central Purchasing Office handle a purchase under \$1000. For example, the department may lack staff or resources to conduct their own purchase and refer the purchase to central purchasing.

competition will be recorded and a documented determination must be made that the price is fair and reasonable. Prices may be obtained verbally or in writing.

For purchases between \$5,000 and \$20,000 a formal Request for Quotations (RFQ) is prepared in writing and faxed or mailed to known suppliers. RFQs are also publicized through the Phoenix Chamber of Commerce. Purchases over \$20,000 are handled through a competitive sealed bidding process and require a formal Invitation for Bid (IFB) or a Request for Proposals (RFP). Notices of IFBs and RFPs are sent to bidders on the City's Bidder's List and these opportunities are advertised in the *Arizona Business Gazette* and *Bid Source*.

Regarding purchasing conducted by designated City buyers in the Central Purchasing Office, the Purchasing Division has a written policy dated October 26, 1988, that requires buyers to consult the City's MBE and WBE Certification Directory and contact known MBEs or WBEs when considering a purchase. A September 30, 1994, policy memorandum amended the above policy concerning the use of M/WBEs. The policy made it no longer mandatory for buyers to continue to contact M/WBEs that did not respond to the City's RFQs.

If an M/WBE fails to respond to two consecutive requests for quotation in a particular commodity or service area, buyers are to discontinue requesting quotations from that firm for that area. Once a buyer concludes that an MBE or WBE will not be asked to participate in future quotation processes, the buyer is required to notify the M/WBE procurement manager. The notification consists of the name of the business, the commodity or service area, and the requisition numbers of the requests to which no response was received. The M/WBE procurement manager is to maintain a file of the notices and contact the business to determine why there was no response to the RFQs. The M/WBE procurement manager then advises the buyer accordingly.

The September 30, 1994, memorandum further explains that the above changes do not affect the City's current procedures covering the formal bid process for purchases over

\$20,000. M/WBEs are not to be removed from the formal bidders mailing lists without the approval of the deputy finance director. Buyers were responsible for ensuring that appropriate M/WBE firms were on these lists until a policy memorandum dated November 23, 1994, gave the M/WBE procurement manager this responsibility.

As stated above, buyers in the Purchasing Division are also governed by A.R. 3.24, which covers the purchasing of commodities, capital equipment, and non-professional services. A.R. 3.24 establishes the general policy that the Finance Department will “fairly and impartially purchase through open competition and give equal opportunity for vendors to participate in the procurement process.” In addition, A.R. 3.24 requires that all known M/WBE firms able to quote shall be solicited for all purchases covered by the regulation.

### **The Bid Preference Program**

Section 18-204 of Article VII establishes a competitive bid preference for certified MBEs and WBEs that bid on eligible contracts. This section, as amended in November 1995, states that the City may allocate up to a 2.5 percent competitive bid preference to certified MBEs and WBEs that bid on eligible contracts under \$250,000. Before the 1995 amendment, the original ordinance established a competitive bid preference percentage of up to five percent on all eligible contracts under \$500,000. The 1995 amendment to Article VII reduced the bid preference percentage to 2.5 percent, and the maximum contract dollar amount to \$250,000.

In determining the lowest responsive bid, the bid preference is applied to a bid submitted by a certified MBE or WBE by reducing the business' bid price(s) by up to 2.5 percent. The adjustment is only for the purpose of establishing the apparent low bidder and the actual contract amount awarded is the original bid submitted by the MBE or WBE. All eligible contracts are subject to bid preference requirements, unless the contract is exempt under Section 18-204(C) or the contract is not considered an “eligible contract” by definition.

Article VII defines an eligible contract as any contract for goods and services for use in City operations unless otherwise precluded by law. The term “eligible contract” does not include sole source contracts, petty cash purchases, emergency purchases, contracts for professional services, architectural and engineering services, or contracts for City utility payments, phone payments, rents, professional association fees, magazine subscriptions, payments to other governmental entities, and bank transfers.

Article VII also contains a provision for bid preference requirements involving joint ventures. A joint venture involving an MBE or WBE receives a 2.5 percent bid preference on an eligible contract when the MBE’s or WBE’s joint venture participation exceeds 35 percent. The MBE or WBE partner must be responsible for a clearly defined portion of the work to be performed and share in the ownership, control, management responsibilities, risks and profits of the joint venture. The MBE’s or WBE’s portion of the contract must be assigned a commercially reasonable dollar amount and the work must be detailed separately from the work to be performed by the non-MBE or non-WBE joint venture partner. The City Manager’s Office must have access to all records pertaining to joint venture agreements before and after the contract award to the extent necessary to ensure compliance with this Article.

### **Bid Preference Exemptions**

It is important to note that the bid preference does not apply to contracts with the City that exceed \$250,000 in total annual value, contracts with non-profit agencies, contracts for the provision of services paid for directly by citizens and not from City funds, contracts covered under Article VI of the Phoenix City Code regarding construction, and contracts for architectural and engineering services. In addition, Article VII, as amended in 1995, provides an additional exception to the bid preference requirement.

MBE or WBE vendors or suppliers entering into a contract or contracts receiving a bid preference under this Article, with a cumulative contract total gross value exceeding

\$350,000 within any fiscal year, are excluded from the bid preference requirement. The exclusion is applied on a year-by-year basis, computed as of the date of bid opening, with no carryover from any prior year and regardless of the date of completion of any contract. The rationale for this provision was to eliminate businesses from the program that have, as a result of increased revenue, “graduated” from the program and are no longer in need of assistance. As a result of their status as MBEs or WBEs, businesses can benefit from the price preference program to the extent that they are no longer eligible to receive any further benefits from the program in a given year. According to City officials, this exemption has only affected one business since the inception of the program.

### **3.3.3 Monitoring the Procurement Program**

City officials have decided to approach the disparity issue from a departmental perspective and allow each department to identify its business goals and establish its own affirmative action objectives in identifying and conducting business with MBEs and WBEs. Each City department voluntarily establishes its own departmental business affirmative action goals based on the Affirmative Action Plan Guidelines provided by the City’s Equal Opportunity Department.<sup>8</sup> EOD provides guidelines for developing and implementing a department’s business affirmative action plan, and provides examples of how departments can be assessed full, partial, or no credit for adopting and implementing certain activities designed to increase participation of, and outreach to, MBEs and WBEs.

EOD and the Finance Department monitor each department’s business affirmative action plan as it relates to the department’s business objectives<sup>9</sup> and procurement efforts. In partnership, EOD and the Finance Department evaluate each City department on its established objectives and demonstrated efforts to involve MBEs and WBEs in their

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<sup>8</sup> Departments do not establish numeric goals in their business affirmative action plans.

<sup>9</sup> City departments separate their affirmative action plans into two areas: employment objectives and business objectives. This study is concerned only with the business component of the departments’ plans, which involves the availability and utilization of MBEs and WBEs.

respective contracting and purchasing activities. The Finance Department maintains logs and produces monthly reports on utilization of MBEs and WBEs, as well as outreach efforts to increase participation of MBEs and WBEs. Although EOD does not conduct formal monitoring during the year, departments provide EOD with mid-year progress reports and annual reports on efforts to meet their affirmative action objectives, which include spending objectives, EOD notification efforts, outreach efforts, and purchasing summaries. An Equal Opportunity specialist along with the Finance Department's M/WBE procurement manager review the reports and evaluate each department to determine the extent that the department has met its business affirmative action objectives.

EOD also monitors the level of MBE and WBE participation achieved in contracts covered under this Article. EOD staff maintain a database on availability and utilization of certified MBEs and WBEs. This database includes certified MBEs and WBEs across all procurement categories and each City department has access to the computerized database. Each department is also provided with monthly copies of the City of Phoenix MBE and WBE Certification Directory for Maricopa County, which reflects all newly certified businesses, as well as any other changes in a business' certification status. A bound copy of the Directory is published every six months which includes listings of all M/WBEs, as well as DBEs located outside of Maricopa County. See discussion in Section 3.4.3, Certification Process, infra.

The Finance Department's records provide additional methods to monitor and evaluate M/WBE utilization efforts in procurement. Section 18-203(K) of Article VII indicates that the monitoring process for the procurement program includes determining: 1) whether the bid preference is sufficient to make MBE and WBE firms competitive; and 2) whether a significant adverse price impact to the City results from the use of the bid preference. The Accounts Division of the Finance Department develops annual and cumulative reports on citywide procurement activity concerning utilization of, and dollars paid to MBEs and WBEs. The Purchasing Division of the Finance Department also produces a Procurement Activity

Summary reflecting procurement activity and M/WBE utilization by the Central Purchasing Office of the Finance Department.

This summary monitors the impact of the price preference program by comparing the total dollars spent in procurement to the total dollars spent with MBE and WBE firms. The summary also measures the total dollars spent through the bid preference program. Finally, the summary calculates additional costs to the City as a result of the program. For departmental purchases, the Accounts Division of the Finance Department produces monthly Departmental Controlled Purchases Reports reflecting procurement activity and M/WBE utilization by each City department. The Accounts Division also prepares the Citywide Procurement Activity Report, which includes a summary of both departmental purchases and centralized purchases.

#### **3.3.4 The M/WBE Procurement Manager**

As a result of the 1993 ordinances, City officials created a position for an M/WBE procurement manager to implement and monitor the Disparity Program as it relates to the Finance Department. The M/WBE procurement manager is primarily responsible for 1) implementing MBE and WBE procurement program; 2) performing outreach activities directed toward MBE and WBE communities; 3) performing “inreach” activities directed toward departmental purchasing agents, business liaisons, and end users; 4) data collection and reporting regarding utilization of MBEs and WBEs; 5) training; and 6) documenting all developmental activities. In essence, the M/WBE procurement manager acts as a liaison between City departments and the MBE and WBE communities, working directly with businesses that have demonstrated an interest in doing business with the City. The M/WBE procurement manager reports directly to the deputy finance director for the Purchasing Division.

On a day-to-day basis, the M/WBE procurement manager is involved in multiple activities. As outreach efforts, the M/WBE procurement manager contacts MBE and WBE

owners by phone, interviews owners who visit City offices, or visits their business for an on-site interview in order to develop a relationship with the owner(s) and to be a centralized source of information. The M/WBE procurement manager attends meetings, conferences, trade fairs, and workshops to identify new MBE and WBE resources for participation in the City's program, often participating as a panelist or presenter. The M/WBE procurement manager also conducts workshops to provide information to small-, minority-, and women owned businesses on doing business with government entities.

The M/WBE procurement manager actively identifies new businesses and refers them to the EOD for certification, and similarly, EOD refers certified businesses to the M/WBE procurement manager to include those businesses in the City's procurement program. EOD also refers businesses to the M/WBE procurement manager that have not responded to EOD's request to become recertified with the City. Follow-up phone calls are made to determine reasons for declining recertification, and the M/WBE procurement manager has been successful in getting businesses to recertify with the City. The M/WBE procurement manager distributes current bidding information, including bidding opportunities and the buyers responsible for certain commodities and services, to MBE and WBE organizations and their respective Chambers of Commerce.

Generally, the M/WBE procurement manager assists businesses in conducting business with the City and forwards business cards and product information to specific City employees and buyers responsible for an MBE's or WBE's respective purchasing area. To assist businesses not yet certified with the City, he sends out certification forms to potential M/WBE resources to encourage them to become certified. To assist certified MBEs and WBEs in the bidding process, public information may be provided such as previous pricing for upcoming bids to encourage businesses to submit a bid.

In order to encourage businesses to become more competitive in the bidding process, the M/WBE procurement manager may also suggest that businesses give the City a two



percent prompt payment discount, which will further enhance their bid price. All unsuccessful bidders are sent information on bid tabulations and encouraged to continue bidding on work with the City. The M/WBE procurement manager also refers businesses to the City's Community and Economic Development Department's Small Business Assistance Program for financial and technical assistance.

The M/WBE procurement manager meets with various City departments as needed and assists them in developing their business affirmative action plan, revising or restructuring departmental goals, and discusses ways the department can improve program participation. The M/WBE procurement manager updates bidder lists to include newly certified businesses, participates in pre-bid conferences when needed, reviews IFBs and RFPs for MBE and WBE involvement, and makes calls to MBEs and WBEs for follow-up participation on an IFB or RFP.

The M/WBE procurement manager is assisted by an Accountant II. The Accountant II tracks M/WBE expenditures and prepares monthly reports. The Accountant II's time is shared between M/WBE program functions and general accounts payable duties.

### **3.4 Certification Policies, Procedures, and Programs**

Chapter 18, Article VIII, of the Phoenix City Code, enacted in October 1993, outlines the City's policies relating to the certification of minority- and women-owned business enterprises, establishes criteria for certification, and creates an appeal process when an applicant is denied certification.

#### **3.4.1 Equal Opportunity Department**

The City's Equal Employment Opportunity Department has been delegated the authority to administer and enforce Article VIII, and to establish written procedures to implement the Article. The City Manager's Office has promulgated A.R. 1.88 to establish procedures to implement Article VIII. EOD and the City Auditor's Office are responsible for

implementing A.R. 1.88. EOD has the primary duty of certifying contractors, subcontractors, vendors, and suppliers as “bona fide” MBEs or WBEs eligible to conduct business with the City of Phoenix in accordance with the standards set forth in Article VIII.

In addition, EOD has representatives on the Goals Setting Committee to assist in setting construction project goals and is responsible for the approval of M/WBE utilization plans submitted by prime contractors in construction bidding. EOD is also represented on the Waiver Review Committee. In addition, EOD is responsible for developing and maintaining a public database of certified MBEs and WBEs, as well as maintaining statistical data on the availability of MBEs and WBEs. In addition to M/WBE responsibilities, EOD also provides all bidders information regarding the City’s Affirmative Action Programs during pre-bid conferences. EOD maintains a database of over 60,000 vendors who are eligible to conduct business with the City.

#### **3.4.2 Certification Application**

According to City officials, the Cities of Phoenix and Tucson, Maricopa and Pima Counties, the Arizona Department of Transportation (ADOT) and the Tucson Airport Authority developed an intergovernmental agreement in 1996. Currently, operating under limited reciprocity, these six agencies have agreed to develop procedures to establish “one-stop certification.” A joint, intergovernmental application is the first step toward one-stop certification. The intergovernmental certification application used by these six entities is designed to assist them in gathering required information regarding standards for certification as discussed in Section 3.4.3, Certification Process, *infra*. This application was designed to simplify the certification process by requiring each agency to utilize the same application, request the same information, and allow the materials requested to be used by each agency in its certification process. In addition, the application was designed to increase customer satisfaction.

The movement toward one-stop certification consists of three stages. The current intergovernmental application is part of the first stage — limited reciprocity. To effectuate this stage, the entities developed standardized forms and documentation requirements that are currently in use in all participating agencies. Additionally, an applicant is only required to submit paperwork to one jurisdiction. However, this stage allows each entity to continue to process all applications submitted to the respective agency and make an independent determination of the applicant's eligibility. Under limited reciprocity, a certification application is reviewed in the following manner.

If an applicant seeks certification with a particular agency, the applicant must complete the certification process with that agency before the applicant can be certified with another agency, even if the applicant desires immediate certification with another agency. If a business is certified with Maricopa County and then sought certification from the City, for example, the business would indicate on the second application that it is certified with Maricopa County. The City would request from Maricopa County all the material gathered during the original certification process. The City would then review Maricopa County's application and documentation and not require the business to reproduce the same documentation. The City can then certify the business based on the first certification application. The City could also, at its discretion, conduct its own independent investigation and can decide not to certify the business even if the business is already certified with another agency. Even though EOD is delegated authority to accept the certification of another certifying agency through limited reciprocity, EOD still reviews each certification application, conducts its own investigation, and makes an independent determination regarding certification. According to City officials, this is conducted to ensure the accuracy of the City's certification list.

The second stage of the movement toward one-stop certification is complete reciprocity. This process would still require a business to seek certification with one agency

initially. However, the business can indicate on its application any additional agencies with which it would like to seek certification. Once the original agency certifies the business, the business would automatically be certified with the other requested agencies. The benefit would be to enable a business certified by one entity to be certified with the other entities solely on the strength of the initial certification.

The final stage is complete one-stop certification. This would allow a business to be certified with all six entities through one certification application. The certification application and review process could be funded and staffed through a consortium of the participating entities. According to City officials, the movement toward one-stop certification will be difficult because of decisions regarding the source of funding and staffing.

#### **3.4.3 Certification Process**

Section 18-302 outlines standards for certifying MBEs and WBEs for participation in the City's M/WBE participation program. EOD certifies a business as an MBE or WBE for inclusion in the City's participation program as follows. If an individual is a minority, as defined in Article VI, and is so regarded by that particular minority community, then that individual is considered to be a member of a bona fide minority group, and his or her business would be eligible as an MBE or WBE for the participation program.

As a primary matter, the business must be an independent and continuing operation for profit, performing a commercially useful function, and owned and controlled by one or more minorities or women. The ownership and control by a minority or a woman must be real and substantial, and must be indicated by customary incidents of ownership. A minority or woman must possess the power to direct or cause the direction of the management and policies of the business and to make day-to-day decisions, as well as decisions on matters of management, policy, and operations. There can be no formal or informal restrictions limiting the discretion of a minority or woman owner.

In addition, there can be no restrictions by partnership agreements, charter requirements, or other arrangements that would prevent a minority or woman owner from making a business decision without the cooperation or vote of any owner who is not a minority or woman. If the actual management of a business is contracted out to individuals other than the owner, then those persons with the ultimate power to hire and fire the managers can be considered as controlling the business. Any securities constituting ownership and control of an entity for purposes of establishing it as an MBE or WBE must be held directly by a minority or a woman. No securities held in trust or by a guardian for a minor can be considered held by a minority or a woman in determining the ownership or control of a business. Ownership and control are also measured as though not subject to the community property interest of a spouse.

According to A.R. 1.88, businesses seeking certification must meet size standards commensurate with small business status. A determination of small business status is based on annual gross receipts averaged over the three previous fiscal years. General contractors must have average gross receipts for the past three years less than or equal to \$16,015,000; specialty contractors less than or equal to \$7,000,000; and engineering, architectural, and surveying firms less than or equal to \$2,500,000.

While not in Article VIII, the cover letter attached to the intergovernmental application states that in order to be certified as an MBE or WBE with the City, the business seeking certification must be located in Maricopa County. Businesses located in Maricopa County receive certification as both an M/WBE and a DBE. The letter further states that businesses located outside Maricopa County do not qualify to participate in the City's incentive programs and will be certified as DBEs only.

The intergovernmental application is the only application used to certify businesses. Firms located inside Maricopa County complete the application to obtain certification as an M/WBE and a DBE. Businesses located outside Maricopa County complete the same

application to obtain certification as a DBE. Before March 4, 1999, the City was able to certify businesses as DBEs using the intergovernmental application because the United States Department of Transportation (USDOT) regulations presumed that individuals belonging to one of the identified ethnic or gender groups cited in USDOT regulations were socially or economically disadvantaged.

As of March 4, 1999, however, the USDOT issued regulations requiring proof of social and economic disadvantage for a business to be certified as a DBE. As a result of these new regulations, EOD is currently sending letters to all certified M/WBEs to inform them that in order to maintain DBE status, they must submit additional information and documentation including a personal financial statement, copies of personal income tax returns for the last three years, and a statement of social disadvantage.

In practice, the City's certification process is as follows. When EOD receives a completed certification application, it is assigned to a program assistant. He or she ensures that the application is complete and all required documentation is attached by completing a checklist. According to A.R. 1.88, if the application is incomplete, notification is sent by mail requesting the missing items. EOD will attempt to contact the applicant by phone to follow up on the request for additional information. If a response is not received within 15 days of the original request, a certified letter is sent informing the applicant that his or her file is being assigned inactive status. The applicant may submit the requested information within three months from the date of the letter to reactivate the file. If no response is received within three months, the applicant must file a new application with all appropriate documentation to reapply.

If the application is complete, it is assigned to a member of the certification staff. That individual conducts a desk audit. The audit includes a review of all the submitted documentation for an examination of the ownership, control, and expertise of the business along with a determination of whether the operation is a viable business. If the certification

staff member has any questions regarding any of the above issues or any of the documentation, follow-up questions are asked of the applicant by both telephone and letter.

Once the desk audit is complete, the same staff member schedules and conducts an on-site interview with the business owner. This interview is conducted to determine whether the business is in fact operated by a minority or woman and to verify by sight that the business is viable and does provide the purported services. Section 18-302(D) authorizes EOD to conduct a specific certification investigation of MBE and WBE ownership arrangements beyond formal documents submitted by each business in certain circumstances. For example, City officials may conduct further investigation if: 1) the business is applying for certification with the City for the first time; 2) it is a newly formed business, or a business with less than 100 percent minority or woman ownership; 3) there is a previous or continuing employer-employee relationship between or among present owners; 4) a non-MBE or non-WBE has an interest in the business; 5) ownership of the business has changed since documents were last submitted to EOD; or 6) a review of the documents submitted with the application raises serious concerns regarding either ownership or control of the business.

Once the on-site interview is complete, the certification staff member completes the on-site report, conducts a final review of the application, and makes a final recommendation regarding the application. The total application, including the site report, is then reviewed by another certification staff member with power to disagree with the final recommendation.

If both individuals agree that the business should be certified, then the decision is final and certification is awarded. If certification is denied by both certification staff members or the staff members do not agree, the lead equal opportunity specialist makes the final decision to grant or deny certification or request additional information.

EOD grants certification for a period of one year. A business denied certification on the basis of information submitted cannot reapply for a period of six months. Between

October 1993 and December 1997, only 19 businesses have been denied certification or recertification. Generally, a business will withdraw its application for certification before a denial is issued because this allows the business to correct the problem and reapply within as little as six weeks. A business has the right to appeal a denial of certification and may still be certified if the appeal is decided in its favor. The appeal process is discussed further in Section 3.4.5, Recertification, Decertification and Appeals, *infra*.

From October 1993 to December 1997, 3,330 applications for either first time certification or recertification were made to EOD. The following are the results:

Certifications granted	2,753
First time certifications	1,202
Recertification applications	1,551
Applications denied	19
Applications withdrawn	558

The City provides several outreach efforts to assist applicants with the certification process and to increase the number of certified businesses. City officials conduct approximately six certification workshops annually. These workshops walk the applicant through the certification process and department personnel answer any questions owners may have regarding the process. EOD personnel attend various community events and activities to provide information regarding the City's certification process and the benefits businesses receive by certifying. EOD also requires a certification staff member to be available during business hours to assist potential applicants with questions regarding the application process. Staff members rotate the responsibility of taking telephone calls and questions from walk-ins.

#### **3.4.4 Certification Directories**

Once a business is certified as a minority- or woman-owned business, it is placed in the City of Phoenix Minority- and Woman-Owned Business Enterprise Certification Directory.



This directory is divided into two sections: 1) an index listing by business type; and 2) an alphabetical listing by business name. Section one divides businesses into four major categories: construction contractors, consultants, services, and vendors and suppliers. Each category is further divided into particular services provided to the City within that category. The certified M/WBEs are listed under the subcategory for the services they provide. Section two lists the certified companies in alphabetical order. The company address, phone and fax numbers, and contact person are also provided. Also included are the type of business and certification expiration date. It was noted, however, that businesses are not divided according to the owner's ethnicity.

In addition to the above directory which lists all certified businesses regardless of trade, EOD also provides two additional monthly directories to EAS. One directory lists certified M/WBEs in the construction industry. This directory is restricted to businesses located in Maricopa County. The second directory, also provided to EAS, lists businesses certified as DBEs for federally funded projects. It includes all certified MBEs and WBEs, along with any businesses located outside of Maricopa County that are certified as DBEs for federal projects.

The City updates its certification lists daily; however, the directories are printed and distributed monthly to EAS for use in construction bidding and to the business liaisons in each procurement department. In addition to providing the monthly directories to departments within the City, EOD makes the directories available to non-M/WBE businesses to assist them in locating and identifying businesses to solicit as subcontractors.

Every six months both directories are combined and bound for distribution to the public. This bound directory lists not only businesses located in Maricopa County that are certified as M/WBEs for the City's construction and procurement programs, but also all businesses including those outside of Maricopa County that are eligible for Federal Disadvantaged Business Enterprise Program projects.

**3.4.5 Recertification, Decertification, and Appeals**

Under Section 18-302(D), to remain certified all MBEs and WBEs appearing in the certification database are required to submit a disclosure affidavit with required documentation annually to EOD. The disclosure affidavit and related documents are evaluated for thoroughness and accuracy to determine whether any changes have occurred that affect the status of the business as a bona fide MBE or WBE. An investigation may be conducted to evaluate an applicant for recertification as deemed appropriate by the EOD director. All certified MBEs or WBEs are subject to monitoring by EOD to ensure that the appropriate ownership and control continues.

To assist in recertifying businesses, EOD sends a notice along with an application for recertification to the certified business not less than 45 days before the date certification expires. The notice indicates that the business must have its application completed and returned to EOD before the expiration date. City officials will not allow a business' certification to expire if the business submits its application before the expiration date even if the review of the application is not complete. If the applicant indicates no changes in its business status, the City will renew the certification. If the applicant indicates changes in its business status, the City will request documentation regarding those changes and render a determination based on the newly submitted information. The City also requires a certified business to complete a full certification application every five-years. The rationale is that a business is likely to undergo several changes in a five-year period.

According to Section 18-302(E), EOD may decertify a business if it finds that the business is no longer a bona fide MBE or WBE. Specific reasons for decertification include: 1) the entity has changed to the extent that the business no longer satisfies the requirements of ownership, control, and/or size; or 2) the MBE or WBE fails to submit information requested by EOD within a reasonable time period. These reasons are not intended to be all inclusive. The City's position is that once a business has been certified, the business has

a vested interest in the City's contracting and purchasing programs; therefore, the City accepts the burden of proving a business should be decertified.

Generally, a decertification inquiry results from two situations. First, a third party may challenge a business' certification. Second, EOD may become aware of information causing it to question a business' certification status. Once a decertification inquiry begins, EOD will conduct an investigation requesting documentation of a business' minority- or woman-owned status. The business owner will have the opportunity to meet with EOD to discuss the allegations. Businesses decertified for reasons other than by voluntary request may not apply for recertification for such time as may be specified, up to one-year. A business that is decertified has the same appeal rights under Section 18-303 as a business denied certification. Since October 1993, only one business has been decertified.

Section 18-303 and A.R. 1.88 outline the procedures for appealing a denial of certification. If the EOD director denies an MBE or WBE certification, he must notify the affected party in writing within 15 days by registered mail, and explain the reasons for his decision. Any contractor, subcontractor, vendor, or supplier who has been denied certification as an MBE or WBE by EOD may appeal the decision by filing a written notice of appeal with the EOD director within seven working days of receipt of the denial of certification. This written notice must state the reasons for the appeal.

Within three working days after receipt of the notice of appeal from the aggrieved party, the EOD director forwards the notice to a hearing officer. Within seven days of the date of receipt of notice from the Equal Opportunity Department, the hearing officer provides the aggrieved party with notification of a hearing date. The hearing officer then notifies all parties of the hearing by certified mail, setting forth with particularity the charges filed by the aggrieved business, and including the hearing date, time, and place.

All parties must be provided a fair and impartial hearing and are allowed to produce any and all evidence in either party's possession concerning the determination of

noncompliance with the requirements of Article VIII or the denial of certification. Within seven working days of the hearing, the hearing officer issues written notice of the decision on the appeal to all parties by certified mail. His or her decision affirms, alters, or reverses the denial of certification by EOD and sets forth the reasons for the decision. If the hearing officer finds for the aggrieved party, then the business is certified as an MBE or WBE and added to the City's certification database. The officer's decision is binding on all parties, subject to the right of appeal as provided by law.

### **3.5 Small Business Assistance Program**

The City's Small Business Assistance Program (SBAP) was established in November 1993, and formally initiated in May 1994. This program represents an effort by City officials to develop race- and gender-neutral remedies to assist small minority- and women-owned businesses. SBAP was created as part of the Community and Economic Development Department and is administered by the economic development administrator.

While the program was in its formative stages, program administrators developed an action plan based on a series of recommendations from the Disparity Study Task Force in order to facilitate implementation of the City's race- and gender-neutral programming. Administrators formulated the primary objectives: to promote and support the inception and growth of small businesses located in Phoenix and to assist Phoenix small businesses by providing technical and financial assistance and networking opportunities.

SBAP has several strategies currently in place to reach these objectives:

- maintaining the First Point Information Center;
- providing management and technical assistance services;
- providing financial assistance services;
- developing consulting and counseling service partnerships;
- providing seminars, training, and networking opportunities;

- providing Enterprise Community program coordination;
- conducting small business assistance outreach; and
- coordinating the economic development component of the Community Development Block Grant program.

SBAP works in partnership with many organizations to bring small business resources to the Phoenix community. For example, SBAP partners with Maricopa Community College's Small Business Development Center to provide one-on-one counseling in the First Point Information Center at Phoenix City Hall. Each activity designed to implement the above goals is described below.

Although SBAP is a race- and gender-neutral program, administrators make special efforts to reach minority- and women-owned businesses. SBAP works with many business organizations including minority Chambers of Commerce, the Greater Phoenix Urban League, Chicanos Por La Causa, the Grand Canyon Minority Supplier Development Council, and the National Association of Women Business Owners. SBAP's Community Development Block Grant open allocation process also provides limited funding to support organizations including minority Chambers of Commerce.

In addition, SBAP targets minority and women business owners by sponsoring four major annual outreach events: a business seminar in Spanish, Minority Enterprise Development Week Awards Breakfast and Business Opportunity Trade Fair, Asian American Business Expo, and Enterprise Breakfast and Small Business Trade Fair. The SBAP submits city council reports on each of these events, and maintains monthly reports that provide project status information and a current list of all SBAP activities.

When a business first contacts the SBAP, the staff member assigned to the initial intake session, either by phone or in person, completes an Information Request Tracking Form (IR). The form standardizes the information requested from businesses and lists all of the available resources throughout SBAP. A copy of the Information Request Tracking

Form is attached as Appendix A5. Referrals are then made to the appropriate program within SBAP according to the business needs assessed in the intake process.

### ***3.5.1 Small Business Assistance Program Components***

SBAP actually consists of seven smaller programs: 1) First Point Information Center; 2) technical assistance; 3) consulting and counseling services; 4) seminars and training; 5) resource directories; 6) financial assistance; and 7) the City's Enterprise Community. Business roundtables are held annually, and are comprised of small business owners, representatives from financial institutions, and small business assistance providers. These roundtable discussions are designed to ensure that SBAP continues to address the critical needs of the small business community and does not duplicate other existing small business programs.

The First Point Information Center is designed to provide coordinated assistance to Phoenix area businesses. The Center is located within CED and professionals provide intake, referral, and follow-up services to small business owners. Specifically, the Center provides information regarding City licensing and tax requirements, the certification process for women- and minority-owned businesses, ombudsman services for all City of Phoenix offices, assistance in securing business with the City, referrals to other community support programs, and assistance with the City's Enterprise Community. In addition to the above services, the Center provides a "hotline" to assist callers with various business needs. During calendar year 1998, over 5,000 small businesses phoned or visited the Center for assistance.

SBAP also provides small businesses with several forms of technical assistance. First, the program contracts with professionals to counsel in general business administration and marketing to assist businesses in developing business plans, human resource plans, and business risk assessment plans. The business counselors also provide assistance in preparing financial reports and any other necessary business reports.

The program provides finance counselors who offer detailed financial assistance to support businesses' external financing requirements, as well as bond packaging assistance. Bond packaging assistance involves preparing detailed information to support a construction company's performance payment, and other business-related bonding requirements. The final form of technical assistance provided is a "business needs assessment." This assessment evaluates the adequacy of a company's accounting system, management capabilities, and marketing plan.

SBAP has a consulting program that was developed through a joint partnership with Maricopa Community College's Small Business Development Center. Business consultants are available by appointment to assist with business planning, marketing strategies, financial management, inventory management, and other business-related issues. During 1998, consultants met with approximately 300 businesses.

Seminars and training programs are sponsored by SBAP regularly and SBAP often co-sponsors events with other City departments, businesses, and community organizations. Some of these events include a home-based business seminar, procurement seminars, subcontractor success seminars, Asian American Business Expo, seminars in Spanish, Small Business Week, Minority Enterprise Development Week breakfasts, and trade fairs. In 1998, a total of approximately 10,000 people attended these SBAP events. See Appendix A6 for a sample schedule of events.

SBAP maintains a resource directory of traditional and non-traditional lending institutions, technical assistance providers, and bonding companies. The directory lists lending sources, along with their credit programs, and general application requirements. The list of technical assistance providers includes the various types of assistance available, as well as general requirements. Additionally, in 1997, through cooperation with several City departments, City officials developed a "Guide to Operating a Business in the City of Phoenix." The Guide outlines comprehensive, step-by-step procedures for starting a

business in the Phoenix area. As of March 1999, approximately 4,000 guides had been distributed.

SBAP also has several financial assistance programs available. The Expansion Assistance and Development Program (EXPAND) was established by the City of Phoenix to provide access to capital for growing businesses. The program allows businesses to secure financing from traditional lending institutions with collateral offered by EXPAND. EXPAND is not a substitute for conventional loans. The City does not loan funds directly to businesses, rather, it places a collateral reserve account at a bank. The business is then required to secure financing from a lending institution, which may be conditioned on receipt of additional collateral supplied by EXPAND. EXPAND maintains a collateral reserve account, and offers businesses collateral enhancement, which is generally 25 percent of the loan amount. EXPAND funds may be used for new construction, to purchase existing buildings (including land), to remodel an existing building, for working capital, equipment and machinery, and leasehold improvements.

In order to be eligible for the program, a business must be located within the City of Phoenix, owned by a citizen or lawful permanent resident of the United States, have a net worth of less than \$7.5 million, and profits (after federal income tax) of less than \$2.5 million (averaged over the last two-year period). It also must have at least two years of operating history and be a for-profit retail, manufacturing, wholesale, or service company. Priority is given to businesses in the City's redevelopment areas and for economic development projects. As of March 1999, 77 businesses have obtained approximately \$17 million in loans that were partially collateralized through EXPAND.

Small businesses may pursue two other sources of financial assistance funded through SBAP. The Self Employment Loan Fund Program (SELF) assists low-income individuals with business start-up or expansion. The SELF program provides training, technical assistance, peer support, and business loans from \$100 to \$5,000. The second



source of financial assistance is Chicanos Por La Causa, which offers microloans ranging from \$2,000 to \$5,000.

The City's Enterprise Community program (EC) includes funding to enhance and target financial assistance in the EC. The EC is a federally designated area in the Phoenix urban core that has been targeted for comprehensive revitalization due to its high levels of socioeconomic distress. Federal funds are earmarked for small business assistance programs including loan programs, technical assistance, and collateral for EXPAND funds.

SBAP has also developed several programs designed to promote business growth in the EC. First, the City established four small business incubators. These agencies provide technical assistance such as assistance with creating business plans, marketing strategies, tax preparation, and consulting services. Incubator services such as access to computers, copiers, fax machines, telephones, and office supplies are provided to small businesses within the EC. The current incubators are in the following locations:

1. Greater Phoenix Urban League, 1402 South 7<sup>th</sup> Avenue;
2. Community Excellence Project, 2457 East Broadway Road;
3. Chicanos Por La Causa, 1102 East Tonto Street; and
4. Carl Hayden Center, 3216 West Van Buren.

City staff also visit one-on-one with small businesses located in the Enterprise Community. The City also provides seminars targeted at businesses in the Enterprise Community. These seminars are designed to provide information on various topics including procurement, marketing, financing, and services provided by the City. Finally, the City has awarded the Self Employment Loan Fund (SELF)/Association for Supportive ChildCare (ASCC) partnership with a \$50,000 grant to leverage and administer a childcare revolving microloan pool project.